

### **REMARKS**

The above amendment is responsive to points set forth in the Official Action.

Favorable reconsideration is respectfully requested.

The claims are 1 and 3-12.

Claims 1, 3, 6 and 10 are currently amended.

Claim 2 is cancelled.

The amendment to claim 1 is supported in original claim 2.

The amendment to the “hard butter” component of claim 3 is supported at page 7, line 25 to page 8, line 19 of the specification. The remaining amendment to claim 3 is editorial and self-explanatory.

The amendments to claims 6 and 10 are supported at page 1, lines 11-13 of the specification.

No new matter is added.

### **Claim Rejections – 35 U.S.C. § 112**

Claims 2, 3, 6 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Applicants respectfully traverse this rejection.

Applicants have cancelled claim 2 which resolves the antecedent basis issue. The terms “non-fat milk solids” and “non-fat cacao solids” (now in claim 1) are fully explained at page 10, line 12 to page 11, line 7 of the specification. “Non-fat milk solids” and “non-fat cacao solids” are included in non-fat solids. Non-fat milk solids are non-fat solids from milk, and non-fat cacao solids are non-fat solids from cacao beans.

Claim 3 is currently amended to delete the expression “represented by”.

Claims 6 and 10 are currently amended to recite “whipping cream”.

### **Prior Art Rejections**

Claims 1-3 are rejected under 35 U.S.C. § 102(b) as being anticipated by Inayoshi et al. (EP 0609465 A1).

Claims 1 and 3-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hidaka et al. (U.S. 6,497,914 B1).

Applicants respectfully traverse each of these rejections.

#### *1. The Present Invention*

The present invention is directed to an oil-in-water emulsion (O/W) which comprises 10 to 50% by weight of a fat ingredient, 10 to 50% by weight of water, and 10 to 70% by weight non-fat solids. The non-fat solids contain non-fat milk solids or non-fat cacao solids in an amount of 5 to 50% by weight.

The present invention is also directed to a process for producing a diluted oil-in-water emulsion comprising adding the oil-in-water emulsion of claim 1 to an aqueous composition.

#### *2. Inayoshi et al.*

Inayoshi et al. is directed to a custard cream. Custard cream is non-analogous art to the oil-in-water emulsion of the present invention, because a heating step is essential for the preparation of a custard cream. Inayoshi et al. do not disclose or suggest that the proportion of non-fat milk solids or non-fat cacao solids in the non-fat solids is 5 to 50% by weight as recited in claim 1.

Accordingly, Inayoshi et al. do not disclose or suggest all of the features of the present claims and this rejection should be withdrawn.

3. *Hidaka et al.*

The rejection under 35 U.S.C. § 103(a) over Hidaka et al. does not include claim 2. Claim 1 is currently amended to incorporate the features of claim 2. Accordingly, this rejection is overcome.

No further issues remaining, allowance of this application is respectfully requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact undersigned at the telephone number below.

Respectfully submitted,

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November 3, 2008